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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:	)	Case No.: 11-43327
	)	
A.G. FERRARI FOODS	)	Chapter 11
	)	
Debtor.	)	OPPOSITION TO DEBTOR'S
	)	MOTION THAT COMMITTEE OF
	)	CREDITORS NOT BE APPOINTED
	)	PURSUANT TO 11 U.S.C. § 1102(a)(3)
	)	
	)	Date: May 5, 2011
	)	Time: 2:30 p.m.
	)	Ctrm: 215
	)	U.S. Bankruptcy Court
	)	1300 Clay Street
	)	Oakland, California
	)	
	)	

**I. INTRODUCTION**

Creditor Thoits Bros., Inc. ("Thoits") is currently scheduled by A.G. Ferrari Foods ("Debtor") as its eighth largest non-insider, unsecured claim. Debtor's lease with Thoits is also included in Debtor's pending motion to reject leases, and if granted, Thoits' claims will be even larger. Thoits has already returned its form to the United States Trustee indicating that it is

1 willing to serve on a Creditors' Committee in this case.

2 Thoits opposes Debtor's Motion for Order that Committee of Creditors  
3 Not Be Appointed Pursuant to 11 § U.S.C. 1102(a)(3) (the "Motion") because  
4 this is a case where committee oversight is needed and Debtor has not made a  
5 sufficient showing otherwise.

## 6 **II. ARGUMENT**

### 7 **A. Debtor Fails to Show that a Committee Would be an** 8 **Undue Burden**

9 Small business debtors are required to show "cause" in support of a  
10 request to not have a committee. See 11 U.S.C. 1102(a)(3). Debtor makes  
11 only two vague and unsubstantiated assertions in support of a showing of  
12 "cause": first, the committee will cost the estate money and second, a  
13 committee "could impair" the Debtor's ability to sell its business. Other than  
14 the general and conclusory statements about the Debtor's estate being  
15 "disproportionately burdened with the administrative costs of a committee,"  
16 Debtor has introduced no evidence to support this argument. There is  
17 absolutely no financial data included with Debtor's Motion and no attempt  
18 made to explain with any specificity how the additional costs incurred by a  
19 creditors' committee might negatively impact Debtor's ability to reorganize.  
20 This makes Debtor's Motion fatally deficient:

21  
22 Furthermore, the mere fact that a creditors' committee, if  
23 appointed, may translate into additional costs to the Debtor's  
24 estate does not justify dispensing with the committee. Indeed,  
25 the truism that the appointment of a creditors' committee may  
26 result in additional costs to the debtor could be advanced by  
every small business debtor seeking relief under § 1102(a)(3).  
Had Congress' sole concern in devising § 1102(a)(3) been to  
relieve small business debtors from the responsibility of paying  
for costs resulting from the appointment of a creditors'  
committee, it could have easily tailored the provision to effect

1 this result. Since Congress did not choose this route, we conclude  
2 that the “cause” requirement imposed in § 1102(a)(3) must  
3 require something more than a general assertion that the  
4 appointment of a creditors’ committee may cost the Debtor  
5 money.

6 In re Haskell-Dawes, Inc., 188 B.R. 515, 520 (Bankr. E.D. Pa. 1995).

7 Moreover, Debtor has not satisfied the requirements of 11 U.S.C. §  
8 1116(1) that it “append to the voluntary petition . . . its most recent balance  
9 sheet, statement of operations, cash-flow statement, and Federal income tax  
10 return . . . .[or a statement that such documents have not been prepared or  
11 filed].” Debtor has, without any explanation, failed to satisfy this  
12 requirement, which raises a host of concerns, including that it cannot  
13 substantiate its conclusory allegations that a committee will  
14 “disproportionately burden” the estate and that it is not being sufficiently  
15 mindful of the requirements of a small business debtor.

16 **B. Committee Oversight is Justified in this Case**

17 Debtor’s schedules show that it is solvent and the vast majority of its  
18 assets (almost \$3 million) consists of equipment, fixtures, food products, and  
19 dry goods. The valuation of assets in these categories can vary dramatically  
20 depending on whether the assets are liquidated or part of a going concern, and  
21 these are the type of issues for which a committee could add value by way of  
22 the formulation of a consensual plan. It also appears that the vast majority  
23 of Debtor’s unsecured debt is to insiders. Committee oversight is needed to  
24 protect the interests of non-insider unsecureds and to provide an opportunity  
25 for this group to have meaningful oversight with regard to the \$3 million in  
26 assets. This group should not have to rely on individual creditors being

1 willing to bear their own expenses for this oversight.

2       It's also not at all clear why a committee would not be beneficial rather  
3 than an alleged impediment to the sale of the business and plan of  
4 reorganization. Debtor is simply "ignor[ing] the benefits which a creditors'  
5 committee could provide . . . in identifying any obstacles which exist to  
6 confirmation, in negotiating resolutions to such obstacles and, and possibly,  
7 in ultimately effecting a consensual plan." In re Haskell-Dawes, Inc., 188  
8 B.R. 515, 521 (Bankr. E.D. Pa. 1995).

9                   **C.     The Unsecured Creditors' Committee**  
10                   **Acceptance/Rejection Form Should Be Re-Issued**

11       Thoits returned its Unsecured Creditors' Committee Acceptance Form  
12 ("Committee Form"), a true and correct copy of which is attached hereto as  
13 Exhibit "A." Debtor's Motion potentially discouraged others from doing the  
14 same, and Thoits requests that if the Motion is denied, the Committee Form  
15 then be re-issued to determine if there are additional parties in interest to  
16 serve on the committee.

17 **III.   CONCLUSION**

18       Debtor has offered two conclusory and unpersuasive reasons for why a  
19 committee should not be appointed. It has therefore not met its burden under  
20 11 U.S.C. 1102(a)(3) and the Motion should be denied with the Committee  
21 Form being mailed again to the case's largest 20 unsecured creditors.  
22

23  
24 DATED: April 27, 2011

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25 BY: /s/ William C. Lewis  
William C. Lewis

26 Attorneys for Creditor Thoits Bros., Inc.